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IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND)	
RULES 29 & 41 OF THE ARIZONA)	
RULES OF CRIMINAL)	Supreme Court No. R-15-_____
PROCEDURE)	(expedited consideration requested)
_____)	

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Rules 29 and 41 of the Arizona Rules of Criminal Procedure. The proposed change will implement a new statutory provision included in Laws 2015, Chapter 219, HB 2553.

I. Background of the Proposed New Rule. House Bill 2553 was passed in the First Regular Session of the Fifty-second Legislature (2015). HB 2553 adds A.R.S. § 13-907.01, which authorizes a defendant convicted of prostitution to apply to the court to have the defendant's conviction vacated.

II. The Proposed Change to Rules 29 and Rule 41, Form 21.

Rule 29 of the Arizona Rules of Criminal Procedure provides procedures for submitting and processing applications to have a defendant's conviction vacated, to

withdraw a guilty plea, and to restore the defendant's civil rights. The proposed amendments integrate the new basis for vacating a conviction provided by A.R.S. § 13-907.01 into existing Rule 29 and adds an application form for this purpose to Rule 41. The proposed amendments would (1) add a subsection 29.1(b) that provides for a victim of sex trafficking to apply to the court to vacate a conviction of a violation of A.R.S. §13-3214 (prostitution); (2) amend section 29.4 to expressly permit the court to proceed without a hearing if the prosecutor does not oppose an application; (3) add a subsection 29.6 to require that a conviction vacated under A.R.S. § 13-907.01 be confidential, except as to the applicant and by court order; (4) add a subsection 29.7 to require transmission of the order vacating the conviction of a sex trafficking victim to the arresting agency, the prosecutor and the Department of Public Safety; and (5) add a new application Form 21(a) to Rule 41 that calls for the applicant to identify the conviction to be vacated and to state the basis. The judicial discretion provided in the amendment to Rule 29.4 to proceed without a hearing absent opposition to an application is consistent with the language of the new statute and good judicial practice. The proposed amendments are shown in the Appendix to this petition.

III. Preliminary Comments. This petition was presented to the Limited Jurisdiction Courts Committee on April 29, 2015 and to the Committee on Superior Court on May 1, 2015 for comment prior to filing. In response to comments received

changes were made to include the authorizing statutes in order to clearly distinguish the different grounds for vacating a conviction, to expressly include electronic records in the confidentiality provision, and to allow access to the records by the applicant. It was noted that maintaining the confidentiality of a prostitution conviction vacated under this rule will require closing the entire case file, which may include convictions of other offenses.

Also of note, the proposal makes these records “confidential” rather than requiring that they be “sealed,” which means, under Supreme Court Rule 123(g)(1), these records will be accessible by remote electronic means to the parties to the case and the attorneys of record.

IV. Request for Emergency Adoption. HB 2553 has an effective date of July 3, 2015, and action on this rule petition is required before the effective date. Petitioner accordingly requests expedited adoption of the proposed rule changes with a formal comment period to follow as permitted by Rule 28(G) of the Rules of the Supreme Court.

RESPECTFULLY SUBMITTED this 8th day of May, 2015

By /s/_____
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Appendix
(new language is underlined)

Rule 29. RESTORATION OF CIVIL RIGHTS OR VACATION OF CONVICTION

29.1 ~~Notice to Probationers~~Grounds and Notice

a. ~~Probationers. Prior to his or her absolute discharge, a probationer shall receive from his or her probation officer, or the court if there is no probation officer, a written notice of the opportunity~~ A probationer may apply to have his or her civil rights restored, to withdraw his or her plea of guilty or no contest, or to vacate his or her conviction pursuant to A.R.S. § 13-907. The probation officer, or the court if there is no probation officer, must provide a written notice of this opportunity prior to the absolute discharge of each probationer.

b. Sex Trafficking Victims. A sex trafficking victim may apply to the court that pronounced sentence to vacate a conviction of a violation of A.R.S. § 13-3214 committed prior to July 24, 2014 pursuant to A.R.S. § 13-907.01.

29.2 and 29.3 [no change]

29.4 Response by the prosecutor.

At least 10 days before the date of the hearing the prosecutor may file a written response setting forth any reasons for opposing the application, sending a copy thereof to the applicant and his or her attorney, if any. If the prosecutor does not oppose the application or does not timely respond, the court may grant the application without a hearing and issue an order vacating the conviction.

29.5 [no change]

29.6 Record confidential.

When a court grants an application submitted by a sex trafficking victim, all paper and electronic records of the conviction vacated are confidential. The record will be disclosed upon request to the sex trafficking victim or for good cause as ordered by the court. The court must order that notations be made in law enforcement and prosecution records that the conviction was vacated and the applicant was a victim of a crime.

29.7 Transmission of order.

The clerk shall transmit the order vacating the conviction of a sex trafficking victim to the arresting agency, the prosecutor and the Department of Public Safety.

Form 21(a) Application to Vacate Conviction under A.R.S. § 13-907.01

_____ Court _____ County, Arizona

APPLICANT (Name/Address/Phone):	CASE NO. _____ APPLICATION	APPLICATION TO VACATE CONVICTION FOR A PRIOR OFFENSE UNDER A.R.S. § 13-907.01 AND SUPPORTING DECLARATION
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APPLICANT asks the court to vacate the conviction for the crime of Prostitution, under A.R.S. § 13-3214, committed prior to July 24, 2014. The conviction occurred on _____ in this court. This relief is sought under A.R.S. § 13-907.01. The law provides that any person so convicted may apply to the sentencing court to vacate the conviction. The applicant is entitled to relief if the applicant can establish by clear and convincing evidence that the applicant's participation in the offense was the direct result of having been a victim of sex trafficking pursuant to A.R.S. § 13-1307.

Explain how you were a victim of sex trafficking and, as a direct result, were convicted of prostitution:

If additional information is required, you may attach additional pages on lined paper.

I state under penalty of perjury that the information I have provided on this form is true and correct.

Date: _____ Signature _____
Applicant

CERTIFICATE OF MAILING

I CERTIFY that I delivered or mailed a copy of this application to the prosecutor's office that prosecuted the case at the following address: _____

Date: _____ Signature _____
Applicant

Form 21(a)